UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

CRAIG LEE MILLER,

        Plaintiff,

    v.   Case No. 11-C-309

KENNETH MORGAN,

        Defendant.

MEMORANDUM AND ORDER

Plaintiff Miller, who is proceeding pro se, lodged a civil rights complaint under 42 U.S.C. § 1983, alleging that his civil rights were violated. Plaintiff is currently incarcerated and has incurred three "strikes." He has, however, paid the filing fee. Even though he has paid the filing fee, federal courts maintain an obligation to "screen" complaints to ensure that they are not frivolous and that they are not filed for improper purposes.

Plaintiff's effort in this action fares no better than the frivolous efforts that won him strikes from the Seventh Circuit. *Miller v. Wisconsin,* 308 Fed. Appx. 1, 2, 2008 WL 5233079, *1 (7th Cir. 2008) ("These appeals, like Miller's complaint and his motion to vacate, are frivolous.") In this action, he seeks roughly eight billion dollars in damages stemming from the government's alleged failure to follow an order issued by Judge Shabaz in a Western District habeas action nine years ago. Specifically, the government filed a motion to dismiss the petition on timeliness grounds rather than filing a record of Miller's state proceedings. Judge Shabaz granted the motion and dismissed the petition. Plaintiff asserts that this was a violation of rules prohibiting matters outside the pleadings

from being used at the motion to dismiss stage. That is incorrect. Timeliness is perhaps the most common reason to dismiss a § 2254 petition, and it is almost always done at a preliminary stage of the proceedings (often without even hearing from the government). More importantly, the way to contest such a result would be to appeal, not to file a federal lawsuit about it nine years later. In sum, the complaint is frivolous on its face and does not warrant further discussion. Accordingly, the complaint is **DISMISSED**.

SO ORDERED this ___6th___ day of April, 2011.

s/ William C. Griesbach
William C. Griesbach
United States District Judge